

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

CHERYL ANDERSON,

Plaintiff,

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

No. C06-3066-MWB

**ORDER ACCEPTING MAGISTRATE
JUDGE'S REPORT AND
RECOMMENDATION**

I. INTRODUCTION AND BACKGROUND

Plaintiff Cheryl Anderson applied for disability insurance benefits on December 11, 2001. Anderson claimed she was disabled due to a combination of mental health issues and back problems. Her application was denied initially and on reconsideration. Subsequently, at her requested hearing, the administrative law judge (ALJ) ruled Anderson was not disabled. The Appeals Council denied Anderson's request for review and the ALJ's decision became the final decision of the Commissioner.

Anderson timely appealed the agency's decision to this court, and it was referred to Chief Magistrate Judge Paul Zoss for a report and recommendation. After carefully setting forth and analyzing Anderson's medical and vocational history, Judge Zoss respectfully recommended the Commissioner's decision be reversed and the case be remanded under sentence four of 42 U.S.C. § 405(g) for the calculation and payment of benefits. Dkt. # 10.

II. ANALYSIS

The court reviews the magistrate judge's report and recommendation pursuant to the statutory standards found in 28 U.S.C. § 636(b)(1):

A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

28 U.S.C. § 636(b)(1) (2006); *see* Fed. R. Civ. P. 72(b) (stating identical requirements); N.D. IA. L.R. 7.1 (allowing the referral of dispositive matters to a magistrate judge but not articulating any standards to review the magistrate judge's report and recommendation). While examining these statutory standards, the United States Supreme Court explained:

Any party that desires plenary consideration by the Article III judge of any issue need only ask. Moreover, while the statute does not require the judge to review an issue *de novo* if no objections are filed, it does not preclude further review by the district judge, *sua sponte* or at the request of a party, under a *de novo* or any other standard.

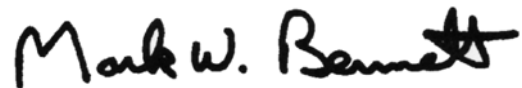
Thomas v. Arn, 474 U.S. 140, 154 (1985). Thus, a district court *may* review *de novo* any issue in a magistrate judge's report and recommendation at any time. *Id.* If a party files an objection to the magistrate judge's report and recommendation, however, the district court *must* "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). In the absence of an objection, the district court is not required "to give any

more consideration to the magistrate's report than the court considers appropriate." *Thomas*, 474 U.S. at 150.

In this case, no objections have been filed. As a result, the court has reviewed Judge Zoss's report and recommendation under a clearly erroneous standard of review. *See Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (noting when no objections are filed and the time for filing objections has expired, "[the district court judge] would only have to review the findings of the magistrate judge for clear error"); *Taylor v. Farrier*, 910 F.2d 518, 520 (8th Cir. 1990) (noting the advisory committee's note to Fed. R. Civ. P. 72(b) indicates "when no timely objection is filed the court need only satisfy itself that there is no clear error on the face of the record"). After conducting its review, the court is not "left with [a] definite and firm conviction that a mistake has been committed," and finds no reason to reject or modify Judge Zoss's recommendation. *Anderson v. City of Bessemer City*, 470 U.S. 564, 573-74 (1985) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). Therefore, the court accepts Judge Zoss's report and recommendation, and the Commissioner's decision is reversed in favor of a finding that Anderson is disabled, and the case is remanded pursuant to sentence four of 42 U.S.C. § 405(g) for the calculation and payment of benefits.

IT IS SO ORDERED.

DATED this 13th day of December, 2007.

A handwritten signature in black ink that reads "Mark W. Bennett". The signature is written in a cursive, slightly slanted style.

MARK W. BENNETT
U. S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA